UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

JAMES E. ALIFF and SAVANNAH DIANNE McNORRILL, on behalf of themselves and all others similarly situated,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 1:14-cv-00198
	)	Judge J. Randal Hall
RESURGENT CAPITAL SERVICES and LVNV FUNDING, LLC,	)	Magistrate Judge Brian K. Epps
Defendants.	)	

DEFENDANTS' OPPOSITION TO
PLAINTIFFS' MOTION FOR CLERK'S ENTRY OF DEFAULT

Defendants Resurgent Capital Services, L.P., improperly sued as Resurgent Capital Services, and LVNV Funding, LLC (collectively "Defendants"), by and through counsel, submit this Opposition to Plaintiffs' Motion for Clerk's Entry of Default. Rule 55(a) provides for the Clerk entering a party's default, if the party has "failed to plead or otherwise defend" a case. Defendants respectfully request that the Clerk deny Plaintiffs' Motion because Defendants have pleaded and otherwise defended the case.

"Default is to be used sparingly. . . . [Further,] '[e]ntry of judgment by default is a drastic remedy which should be used only in extreme situations. '" *Mitchell v. Brown & Williamson Tobacco Corp.,* 294 F.3d 1309, 1316-17 (11th Cir. 2002) (quoting *Wahl v. McIver,* 773 F.2d 1169, 1174 (11th Cir. 1985)). The Eleventh Circuit has held that default judgment is improper where a party has demonstrated its intent to defend an action through (1) participation in removal of an action; (2) filing a notice of appearance before the filing of a motion for default; and (3)

filing a responsive pleading to the complaint shortly after the motion for default was filed. *See id.* at 1317. The filing of a notice of removal has been held to demonstrate an intent to defend. *See, e.g., Geyer v. U.S. Van Lines,* No. 2:12-CV-4678, 2013 WL 65458, *4 (S.D. W.Va. Jan. 4, 2013) (denying entry of default and citing Fed. R. Civ. P. 55(a) advisory committee's note "confirming that acts demonstrating intent to defend need not be 'connected to any particular rule")) (copy attached).

Defendants timely removed this action on October 17, 2014 (D.E. 1). Defendants' Notice of Removal expressly stated that Defendants were not "waiv[ing] . . . their respective rights to assert any defenses" and that they "reserve[d] the right to amend or supplement this Joint Notice of Removal." (*Id.* at ¶ 16.) On October 17, 2014, Defendants also filed corporate disclosure statements. (D.E. 3, 4.) On October 24, 2014, Defendants filed motions for leave to appear *pro hac vice* (D.E. 7, 8), which the Court granted on October 27, 2014. (D.E. 9, 10.) On the afternoon of October 27, 2014, Defendants' *pro hac* counsel were contacted by the Secretary of the Clerk, Debi Silas, and instructed to complete "Attorney CM/ECF Registration," which they completed the following morning. On October 28, 2014 – the same day that Plaintiffs' filed their Motion – Defendants filed their Answer. (D.E. 12.) Thus, Defendants have engaged in the same conduct that the Eleventh Circuit has held demonstrates an intent to defend, which precludes entry of default pursuant to Rule 55(a). *See Mitchell,* 294 F.3d at 17 (affirming that filing a notice of removal and appearance before a motion for default and filing a responsive pleading shortly after the filing of a motion for default demonstrated their intent to defend).

Accordingly, Defendants have demonstrated their intent to defend this action and respectfully request that the Clerk decline to enter a default against Defendants. *See, e.g., Mitchell,* 294 F.3d at 1317; *Geyer,* 2013 WL 65458 at *4.

Respectfully submitted,

s/Derek W. Edwards

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CERTIFICATE OF SERVICE

I hereby certify that on October 29, 2014, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's electronic filing system.

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